



TECHNET  
THE VOICE OF THE  
INNOVATION ECONOMY



Internet Association



Postmates



September 9, 2019

Honorable Gavin Newsom  
Governor, State of California  
State Capitol, First Floor  
Sacramento, CA 95814

Honorable Toni Atkins  
Senate Pro-Tem  
State Capitol, Room 205  
Sacramento, CA 95814

Honorable Anthony Rendon  
Assembly Speaker  
State Capitol, Room 219  
Sacramento, CA 95814

Assemblymember Lorena Gonzalez  
State Capitol, Room 2114  
Sacramento, CA 95814

**Re: AB 5 (Gonzalez) Worker Status: Employees and Independent Contractors — OPPOSE UNLESS AMENDED**

On behalf of the above coalition, we write in opposition to AB 5 unless the recent September 6 amendments are removed from the bill. While we support the Legislature’s ongoing effort to mitigate the unintended consequences and threats posed to some industries by the Supreme Court’s April 2018 *Dynamex* decision, these amendments move the impact of this legislation far beyond the previous scope, and risk creating an uneven patchwork of enforcement venues elevating uncertainty for workers, industry and the State.

Under previous iterations of AB 5, the sole purpose of the bill had been to exempt various industries from the ABC test imposed by *Dynamex*, thereby rolling back the standards applicable to those industries to the previously held *Borello* standard. The technology companies represented by this coalition, specifically app-based rideshare driving, app-based food and grocery delivery, and other freelance work, have been conspicuously excluded from the legislation’s text, and targeted by the bill, we do not believe an exemption and return to *Borello* is the best future path for our industries. We remain committed to working with the Governor, legislature, labor leaders, and workers supported by our technology platforms to establish progressive policies that better reflect the unique nature of this work, while also improving the quality and security of the work enabled by relevant labor laws. Unfortunately, the bill now goes beyond the effort to exempt various industries and instead alters the venues and path through which these standards would be interpreted and applied.

This new component of the bill has been included without having gone through any policy committee to consider its effects or through any public process through which our concerns could have been more openly considered. The consequences of changing not just the underlying law but also the means through which it may be enforced are capricious and at odds with the rest of the bill. The result of these amendments provide more than two dozen sector-wide exemptions and relieves legal uncertainty and potential economic harm to businesses and workers. This could translate to hasty enforcement actions that are politically motivated and may harm hundreds of thousands of working people in California.

In particular, section 2 subsection (j) broadens the grounds to seek injunctive relief and the enforcement powers of various public entities. We are concerned that this provision effectively weaponizes the statute and shows an intent for the underlying law to be applied in circumstances that circumvent due process.

*(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.*

As evidenced by the clear language of the statute, this injunctive relief enforcement delegation applies not only under the ABC test but also to industries that are exempted and fall under *Borello*. See *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, (1987) 43 Cal.3d 1379, 1386-1387 (In determining such [legislative] intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.).

At a minimum, we request that section 2 subsection (j) be amended to include an effective date of January 1, 2021. It's been acknowledged in recent days there are ongoing discussions and negotiations with various industries, including the gig economy, that will continue beyond the conclusion of the 2019 legislative session. It would be punitive and would cause a damaging level of uncertainty for businesses throughout the state to allow industries that have shown good faith efforts on this issue, but have not yet secured a legislative compromise, to be arbitrarily targeted with lawsuits and injunctions.

Thank you for your consideration. We look forward to working together to achieve our shared policy goals while mitigating the significant risks that are triggered by the new enforcement mechanisms in AB 5.

Signed,

**Bay Area Council**  
**DoorDash**  
**Instacart**  
**Internet Association**  
**Lyft**  
**Postmates**  
**TechNet**  
**Uber**